

# MDPS

Minnesota Department of Public Service



TRYING TO MANAGE THE ELECTRIC COOPERATIVE  
RE-REGULATION PETITIONING PROCESS:

A REPORT TO THE LEGISLATURE ON THE PROBLEMS



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June, 1980

## INTRODUCTION

The Department of Public Service is charged under MS 216B.02, subd. 4 with administering the process through which members of cooperative electric associations may determine that they want to be subject to regulation by the Public Utilities Commission.

During 1979 and early 1980, members of Dakota Electric Association petitioned for an election on that question.

This report is a review of the problems experienced in trying to administer the law coupled with some suggestions for changes in the process.

The Department of Public Service maintains a strictly neutral position on the question of whether cooperatives should be regulated. That is a legislative policy decision. We do see a useful Department role in making suggestions on how the policy thus set can best be implemented. That is the purpose of this Report.

## THE PROBLEMS OF THE PETITION PROCESS

Legislation passed in 1978 (§ 216B.02) exempted electric cooperatives from Public Utilities Commission rate regulation. (Cooperatives are still subject to commission regulations relative to service standards and practices.)

That 1978 legislation provided a mechanism through which 5% of the members of a cooperative could petition to come back under commission rate regulation, and if successful, a majority of members voting by ballot would determine whether the cooperative would be regulated or not.

### Developments During Fiscal Year 1980

The Department of Public Service received one petition from members of a cooperative in this fiscal year (Dakota Electric Association). The petition was first submitted to the department in September of 1979. A final decision on that petition was issued by the department in April 1980. The petition failed since 5% of the members had not signed it.

A number of problems arose for the department during that first petition submission. The Department worked with several legislators who had sponsored or were interested in proposals concerning cooperative regulation this past session. The Department also presented testimony before the Senate Commerce Committee Subcommittee on Publicly Regulated Industries (January 24, 1980) on the major problems encountered including the following:

#### 1) GOOD FAITH NEGOTIATION ON PROCESS IS REQUIRED.

The statute is based upon agreements being reached between the cooperative and the department on the conduct of the process. It does not identify what should happen if agreements cannot be reached.

#### 2) WHO IS A MEMBER? WHO CAN SIGN AND VOTE?

There was confusion and controversy over who should be recognized as valid signators on the petition. § 216B.02, subd. 4 states:

" . . . initiated by no less than five percent of the members or stockholders of the association."

The cooperative interpreted that section as meaning that the only signatures to be considered valid on the petition would be those of registered cooperative members only. Others felt that one signature per member household should be considered valid. The Department concluded that it must enforce what that statute said, not what we or others might wish it to say.

### 3) WHO IS TO PAY THE PETITION AND BALLOT COSTS?

The statute is unclear how the costs of the petitioning and balloting process should be paid. It is unclear if expenses incurred by the Department should be billed back to the utility even if the petition and/or ballot are unsuccessful.

#### Future Implications

The Department has received inquiries from other cooperative members. Crow Wing (Brainerd), North Star (International Falls), Northern Electric (Virginia), Anoka (Anoka) are some of the areas from which petitions might be forthcoming. In addition, there is a possibility that the members of the Dakota Electric Association may mount another petition drive.

The interest in petitions for reregulation springs from the increasing electric rates experienced by cooperative members. The Dakota Electric petition was stimulated by a 40% rate increase experienced by members last summer. There is evidence that Dakota Electric members will face another rate increase in the 10-15% range this summer. (That increase will be even sharper to members who live in all-electric homes. One member called recently to state that his monthly electric bill is approaching his monthly house payment.)

The reason for these rate increases is that generation and transmission (G&T) cooperatives, Cooperative Power Association (CPA) and United Power Association (UPA), have recently completed construction of a generating plant in North Dakota (Coal Creek Plant). CPA and UPA are permitted to recover the costs of construction only as the plant becomes operational. This occurred, in part, last summer.

In addition, other costs associated with CPA or UPA purchased power from other sources are also allowed to be passed along to member cooperatives (such as Dakota Electric) and consequently, to cooperative members. Since these are wholesale power costs, the Minnesota Public Utilities Commission would have no jurisdiction. This is true regardless of whether any cooperative voted to have the retail rates regulated by the commission or not. This fact is often not understood by the cooperative ratepayers. They feel that if they were regulated by the commission, then the rates (wholesale and retail) would be analyzed by a responsible state regulatory body.

#### Recommendations

The Department of Public Service recommends legislative action to more clearly spell out the steps in the petitioning process and other procedural matters to reduce some of the consumer anxiety and administrative problems in processing the petitions received.

DEPARTMENT Attorney General*Office Memorandum*

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DATE: 4/19/78

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SUBJECT: **ELECTRIC COOPERATIVE UTILITY COMPANIES REGULATION HF 830**

The legislature has passed and the Governor has signed a bill which removes Minnesota electric cooperative associations from rate regulation under Minn. Stat. § 216B.03 through § 216B.23. I will first discuss the sections of HF 830 and will then discuss the impact upon Minn. Stat. ch. 216B.

## I.

Section 1 amends the legislative finding to express the legislature's conclusions that Minnesota cooperative electric associations are presently effectively regulated and controlled by their membership. Section 2 changes the definition of "public utility," Minn. Stat. § 216B.02, subd. 4 (1976) to exclude cooperative electric associations from the definition of "public utility." Only domestic cooperatives are included. Foreign cooperatives with customers in Minnesota are not deregulated.

Section 2 adds a second paragraph to Minn. Stat. § 216B.02, subd. 4, which describes how a cooperative may elect to become subject to rate regulation. Before July 1, 1978, a cooperative may elect regulation by resolution of the board of directors which is approved at a meeting of the cooperative's members. The other option for electing regulation which applies now and continues indefinitely beyond July 1, 1978, requires a majority vote of the members voting by mail ballot initiated by petition of no less than 5% of the cooperative members. The balloting is approved and supervised by the cooperative's board of directors and the Department of Public Service. All ballots shall be sent to the Department, but the Department shall keep the ballots sealed until the date agreed upon by the board of directors and the Department. On this date, representatives of the Department and the cooperative meet and count the ballots. A majority of cooperative members voting is sufficient to elect regulation. The section ends by indicating cooperative electric associations continue not to be subject to sections of ch. 216B regulating affiliated interests, securities, acquisitions of property or mergers, and stock purchases.

Section 3 amends Minn. Stat. § 216B.06 (1976). Minn. Stat. § 216B.06 prohibits a public utility from receiving different compensation for services rendered than that prescribed in its schedule of rates. The amendment removes the last sentence that which expressly recognizes that a cooperative may return to its members net earnings in proportion to their purchases from the cooperative. Cooperatives electing regulation will be subject to Minn. Stat. § 216B.06. The express protection of the statute allowing return of capital credits by these cooperatives electing rate regulation has been removed; however, the statute apparently was not intended to prohibit return of capital credits to the members of regulated cooperatives.

Section 4 brings cooperative electric associations within the Commission complaint procedures of Section 216B.17 with respect to service standards and practices only. Section 216B.17 authorizes the Commission to act upon its own motion or upon complaint of a public utility, a governing body of a political subdivision, or any 50 customers of the particular utility. Rate regulation is outside the Commission's authority and service regulation is retained. Rate

regulation is anything to do with the cost of energy such as the base rate and the fuel clause. Service regulation encompasses the ability to obtain electricity and the conditions under which it is obtained. Other practices set forth in the cooperative's tariffs fall into a grey area that includes elements of service as well as of cost. Billing practices and even the late payment penalty, with reservations, fall into this grey area and should be considered service standards and practices for purposes of § 216B.17. The Commission would follow the procedures presently found in Section 216B.17. Since for purposes of Section 216B.17, cooperatives are included within the definition of "public utility," a cooperative could bring a complaint against another cooperative.

Section 5, 6, 7 and 8 of HF 830 include cooperatives within the definition of public utility for purposes of sections which regulate electric service areas (Minn. Stat. § 216B.36 through 216B.44), municipal franchises (Minn. Stat. § 216B.36); and purchases of public utilities by municipalities (§ 216B.45 and § 216B.47).

Section 9 amends Minn. Stat. § 216B.62 (1976) to allow the Commission to charge cooperatives for the Commission's expenses incurred in service area disputes and complaint proceedings involving service standards and practices. It also makes cooperatives electing rate regulation fully subject to this section allowing the Commission to assess costs of examination and rate case expenses.

Section 10 repeals the cooperative exemptions in Minn. Stat. § 216B.48 through § 216B.51. This is housekeeping since the cooperative exemptions are transferred to the final sentence of Minn. Stat. § 216B.02, subd. 4.

Section 11 makes this act effective on the date following final enactment (the effective date is April 8, 1978). Section 11 also provides that this act applies to cooperatives with a rate case pending before the Commission and further provides that the rates paid under bond in these pending applications do not need to be refunded.

## II.

Cooperatives electing regulation will continue to be regulated as they were in the past, subject to other 1978 legislation. Thus, I will not further discuss those cooperatives. The following discussion of ch. 216B applies to cooperatives who do not elect regulation. Sections 216B.03 through 216B.16 apply only to public utilities as defined in Section 216B.02, subd. 4. Thus, none of these sections will apply to non-electing cooperatives. These sections deal with reasonable rates; standards of service; published schedules, regulations, files and joint rates; receiving different compensation; prohibiting rate preferences; standards, classifications, regulations, and practices; the accounting system; depreciation rates and practices; right of entrance and inspection; production of records; investigations; and rate changes. The Commission's rulemaking authority and authority to regulate the accounting systems and depreciation rates of utilities included within these sections.

The operation of this act upon Minn. Stat. § 216B.17, Complaints, has been discussed above. It is this section that authorizes the Commission to investigate service standards and practices of non-electing cooperatives.

Minn. Stat. § 216B.18 through 216B.20 and 216B.22 through 216B.35 describe practices and procedures before the Commission. These sections continue to apply to proceedings in which cooperatives are involved. Minn. Stat. § 216B.21 authorizes the Commission to investigate any rate or charge or service problem of "any public utility" and thus does not apply to non-electing cooperatives who come outside the definition of "public utility."

The remaining sections of ch. 216B (Sections 216B.36 through 216B.67) apply to cooperatives in much the same fashion as at present with the exception of Section 216B.52

April 19, 1978

allowing the Commission to assess costs of examination and expenses against the utilities. Thus, non-electing cooperatives remain subject to the determination of electric service areas, municipal franchises, and the purchase of public utilities by municipalities. Sections regulating affiliated interests, securities, acquisition of property or mergers, and stock purchases do not apply to cooperatives. Procedural sections, burden of proof and penalties apply only to the extent included through other operative sections of the act.

### III.

Several problems have been raised by the passage of HF 830. The Commission's rulemaking authority relies upon sections to which cooperatives are not subject and the effect of the customer service rules upon non-electing cooperatives is doubtful. While the Commission can continue to investigate service standards and practices, it may have to this on a case by case basis and not by rulemaking.

The problem of determining what is a rate and what is a service standard or practice is illustrated by the issue of the late payment penalty. As a pure penalty (unrelated to the cost of late payment collection) this is a service practice since it monitors the conduct of the customer and is not intended to recover operating costs. The cost approach to the late payment penalty adopted under regulation is a rate since it seeks to recover an associated cost of selling energy. The solution is to review a practice such as the late payment penalty to the extent it is not cost-based, but the cooperative's determination of what is the cost is not reviewable.

The act removes cooperatives with rate cases pending and allows them to reestablish Commission regulation only after following the election procedure. The rate changes pending are effective without further review and no rates need be refunded. An electing cooperative may waive the lapse in the Commission's authority. A statement from the cooperative voluntarily waiving the lapse and extending the statutory deadline should be sought when it asks to be regulated. The electing cooperative may also voluntarily agree to refund any rates in excess of the amount authorized by the Commission collected while it was not regulated.

The act does not provide a means for cooperatives to withdraw from regulation after they have elected it. Thus, once a cooperative elects regulation, it cannot become deregulated without legislative action.

All cooperative related expenses of the Department incurred before April 8, 1978 should be billed back to the respective cooperative under the old law. The expenses of conducting an election in which the cooperative elects regulation may be billed to the cooperative after the election. The expenses of conducting an election where the cooperative defeats regulation could be billed under an expansive interpretation of the election as a complaint over service standards and practices.

KWS/bm

CHRONOLOGY OF MAJOR EVENTS  
IN THE  
DAKOTA ELECTRIC ASSOCIATION PETITION FOR RE-REGULATION

- 7/79, 8/79 - Dakota Electric Association rates increase by 40% due to a purchase cost adjustment passed through by cooperative Power Association
- 9/12/79
- 9/17/79 - Two Public meetings attended. Department identified how members could petition for regulation.
- 9/11/79 - Department begins to receive petitions on the question of re-regulation.
- 10/17/79 - General discussion meeting held with cooperative management.
- 10/19/79 - Department receives petitions totalling over 2,000 unverified signatures.
- 10/26/79 - Department met with cooperative management to begin to arrive at petition validation procedures.
- 11/14/79 - Two public meetings attended (sponsored by Dakota Electric Association).
- 11/15/79 - Letter of agreement signed by Department and Cooperative relative to petition verification procedures.
- 11/16/79 - Copy of the agreement and cover letter sent to petition leaders asking them to send any additional signatures they feel necessary given the tenets of the agreement.
- 11/27/79 - Letter received from petitioners saying they feel they have a sufficient number of valid signatures.
- 11/30/79 - Petitions, assumed to be valid by Department, forwarded to cooperative for challenge or acceptance.
- 12/11/79 - Phone call received from Cooperative; stated that there were an insufficient number of valid signatures (1,110 signatures deemed valid).
- 12/14/79 - Department conducted on-site review of procedures and results of Cooperative validation process.
- 12/20/80 - Letter sent to Cooperative asking them to check their result and also asking them to state why non-member spouses signatures were not deemed to be valid.

- 1/12/80 - Response received from cooperative.
- 1/24/80 - Department testifies before Senate Subcommittee on publicly regulated utilities. To identify our experiences in administering the statute as it existed.
- 1/29/80 - Meeting held with subcommittee counsel to identify problems encountered in the legislation.
- 1/31/80 - Letter received from cooperative attorney revising downward to 1,092 the number of valid member signatures.
- 2/8/80 - Meeting held with cooperative board and management relative to the petition and the alternatives available in proceeding.
- 2/11/80 - Meeting held with petition lenders relative to the petition and the alternatives available in proceeding.
- 2/14/80 - Letter sent to both groups stating that the decision as to the success or failure of the petition would be postponed until members had an opportunity to discuss the matter with the Board and management. Two meetings were identified.  
     2/19/80 - Meeting of all petitioners.  
     3/15/80 - Cooperative annual meeting
- 2/19/80 - Department representative observed meeting and delivered a short presentation relative to the pros and cons of Public Service Commission regulation.
- 3/14/80 - Department received a version of the original petition verified by Mrs. Trinka. She stated that there were a sufficient number of valid signatures (in excess of 1,238).
- 4/13/80 - Meeting held to resolve the difference between the two counts of valid signatures on the petition. Mrs. Trinka and Mrs. Runzel attended representing the petitioners. Mr. Okerberg and Mr. Rankin attended representing the cooperative.
- Results of Official Department Count:
- |  |        |
|--|--------|
| - Valid signatures totaled to            | 1,191* |
| - Signatures in disagreement totalled to | 33     |
| - Total required                         | 1,238  |
- \*All parties in attendance agreed to this count.
- The petition has failed.
- 4/16/80 - Department issues decision

## THE COSTS OF REGULATION

During the course of the Dakota Electric petition process several questions were raised about the costs of regulation.

Because some wrong information was being given, the Department made several presentations to groups on this subject.

### Background

Legislation passed in 1974 provided a method by which the Department of Public Service would bill back to the utility (and hence its customers), the costs incurred in processing a rate case. The maximum amount the Department can bill back is based upon a percentage of the utility's gross annual operating revenues. For contested rate cases, "the total amount, in any one calendar year . . . shall not exceed two-fifths of one percent of the gross operating revenues . . ." (216B.62, subd 2).

Each year the Department, after determining its total expenditures and deducting all the amounts chargeable to specific rate cases as determined above, assesses the remainder to all utilities "the total amount . . . shall not exceed one-eighth of one percent of the total gross operating revenues (of each utility) . . ."

The maximum that the Department could assess each utility would be:

$\frac{2}{5}$  (40%) of 1% (if the utility filed for an increase in retail rates)  
 +  $\frac{1}{8}$  (12.5%) of 1% (if the total Department expenditures exceeded the  
 amount collected with the  $\frac{2}{5}$ )

$\frac{21}{40}$  (52.5%) of 1% of the total gross operating revenues of the  
 company for that calendar year

It should be pointed out that the Department of Public Service still operates within a budget approved by the legislature. Even though 100% of its costs are billed back to utility companies, those companies pay their assessments into the state treasury. The Department does not benefit if the rate case costs exceed the Department budget.

### Dakota Electric Example of Costs

In an effort to provide accurate information to the public, the Department of Public Service calculated the maximum expenses Dakota Electric (DEA) could incur in a general rate case. This information was released to the public:

#### Dakota Electric Association Estimated Maximum Rate Case Assessment per Member:

Gross Operating Revenues	\$13,245,758 <sup>1/</sup>
Members (as of 12/31/77)	22,602

$\frac{2}{5}$  of 1% of \$13,254,758 = \$53,019.03

\$53,019.03 ÷ 22,602<sup>2/</sup> members = \$2.35/year annual assessment per member

<sup>1/</sup> 13,254,758 is the 1977 Gross Operating Revenues

<sup>2/</sup> 22,602 members is the membership as of 12/31/77

The Dakota Electric Association estimates an annual assessment of \$14,000 (in a letter to consumer members of 12/31/79).

If that is the annual assessment to the Cooperative, each member's share (using the association membership as of the end of December, 1978 as 26,363 ) would be \$.53.

During the time it was regulated, DEA did not have any general rate cases so no direct costs were assessed. It did however get charged for its pro-rata share of indirect costs <sup>1/</sup> as follows:

	<u>Total Assessment</u>	<u>Members</u>	<u>Costs/Member</u>
1975	2,906.48	19,435	15¢
1976	2,639.74	20,966	12.6¢
1977	6,300.00	22,602	27.9¢
1978	6,269.94	24,203	25.9¢

Note:

1. Indirect costs are service costs not part of processing a rate case but cover other services such as:
  - a) compliance with customer service rules on late payments, shut-offs, entrance by utility employees, consumer information, etc.;
  - b) review of operating expenses and capital investments;
  - c) review of used and useful equipment purchases;
  - d) review of automatic adjustments;
  - e) customer complaints;
  - f) processing miscellaneous filings.

RATE CASE EXPENSES FOR COOPERATIVE UTILITY COMPANIES

1975 Cooperative Rate Cases

Anoka Electric Cooperative	
Company Expense	\$ 24,327.27
PSC Expense	19,448.00
Total Expense	\$ 43,775.00
Membership	32,000.00
Expense Incurred Per Member	\$ 1.02
Beltrami Electric Cooperative	
Company Expenses	\$ 19,448.01
PSC Expenses	6,681.49
Total Expenses	\$ 26,129.50
Membership	8,300.00
Expense Incurred Per Member	\$ 3.15

1976 Cooperative Rate Cases

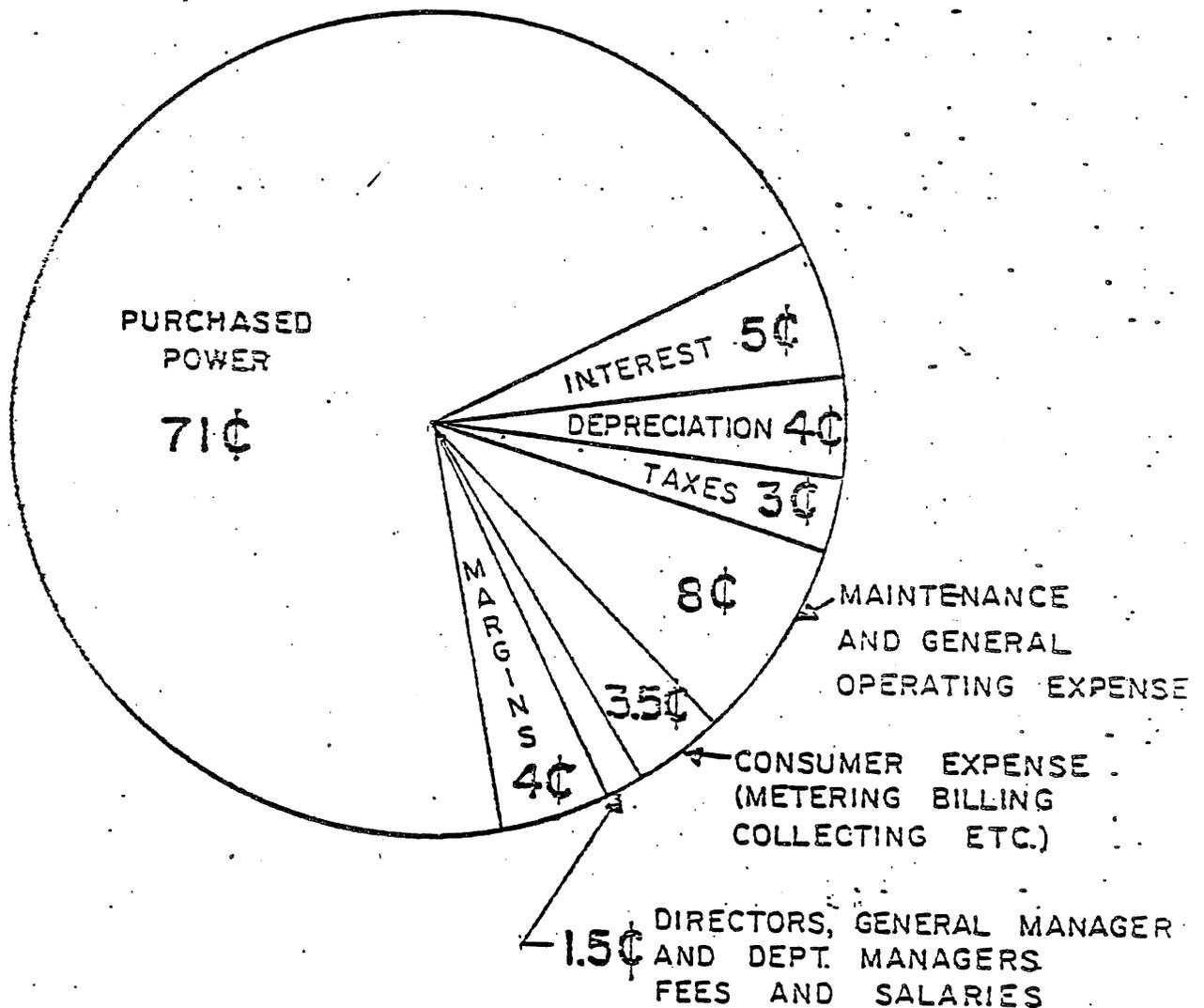
Freeborn-Mower Electric Cooperative	
Company Expenses	\$ 11,151.00
PSC Expenses	12,267.00
Total Expenses	\$ 23,418.00
Membership	4,883.00
Expense Incurred Per Member	\$ 4.80
Cooperative Power and Light Association	
Company Expenses	\$ 9,204.85
PSC Expenses	4,103.15
Total Expenses	\$ 13,308.00
Membership	2,997.00
Expense Incurred Per Member	\$ 4.44
Mille Lacs Electric Cooperative	
Company Expenses	\$ 2,806.84
PSC Expenses	5,627.00
Total Expenses	\$ 8,433.00
Membership	8,500.00
Expense Incurred Per Member	\$ .99
Wright-Hennepin Electric Association	
Company Expenses	\$ 18,099.00
PSC Expenses	10,035.00
Total Expenses	\$ 28,134.00
Membership	14,500.00
Expense Incurred Per Member	\$ 1.94
Dairyland Electric Cooperative, Inc.	
Company Expense	\$ 4,694.50
PSC Expense	4,954.00
Total Expense	\$ 9,648.50
Membership	8,900.00
Expense Incurred Per Member	\$ 1.08
Redwood Electric Cooperative	
Company Expense	\$ 6,073.04
PSC Expense	4,246.00
Total Expense	\$ 10,319.00
Membership	2,100.00
Expense Incurred Per Member	\$ 4.91
Southwestern Minnesota Cooperative Electric	
Company Expense	\$ 6,400.00
PSC Expense	10,035.00
Total Expense	\$ 16,435.00
Membership	2,600.00
Expense Incurred Per Member	\$ 6.32

1977 Cooperative Rate Cases

Crow Wing Cooperative Power and Light	
Company Expense	\$ 13,365.00
PSC Expense	3,836.00
Total Expense	\$ 17,201.00
Membership	19,558.00
Expense Incurred Per Member	\$ .88
McLeod Cooperative Power Association	
Company Expense	\$ 11,194.62
PSC Expense	6,161.00
Total Expense	\$ 17,355.00
Membership	4,671.00
Expense Incurred Per Member	\$ 3.72

Rate Case expenses for eleven (data not available for two other cases; Dairyland 1977, Mille Lacs 1977) Cooperatives who had filed during the period 1975-1977 average to \$3.02 per member.

# WHERE THE 1979 RATE DOLLAR WENT AT DAKOTA ELECTRIC ASSOCIATION



The real impact of regulation of Dakota Electric Association would have been felt on only 21¢ of each \$1.00 spent by DEA during 1979 because:

- 71¢ went for purchased power which could still be passed through to customers under current PSC Rules.
- 08¢ went for interest (5¢), and taxes (3¢) which also would be allowable costs.
- 21¢ Amount subject to impact or change under regulation by PSC.

The commission would concentrate on the wages portion (about 17¢) of that total. In reviewing that 17¢ the commission would use the criterion of reasonableness. They would compare actual expenses to those deemed to be reasonable, and adjust accordingly.

### LEGISLATIVE ACTION RECOMMENDATIONS

In order to repair some of the problems with the petition process the following improvements should be made:

- 1) Base number of signatures required on petitions by using the membership figures from the most current REA reports.
- 2) Clarify intent to use cooperative's by-laws definition of member for petition and voting purposes.
- 3) Set specific time frames for petition process.
  - a) Co-ops to verify or challenge signatures within 20 days of receipt of petitions from Department.
  - b) Department to review and decide challenges within 10 days of receipt of notice of co-op challenges.
  - c) Election to be held within 60 days of petition sufficiency.
- 4) Department to be given authority to make decisions or rules about the process to avoid delays.
- 5) Ballot form to be specified by statute.
- 6) Co-ops to pay costs of balloting and processing.

These improvements will greatly improve the process.

## STATUTES RELATIVE TO ELECTRIC COOPERATIVES

3231

PUBLIC UTILITIES 216B.02

## CHAPTER 216B

## PUBLIC UTILITIES

Sec.		Sec.	
216B.01	Legislative finding.	216B.35	Transcribed record to be kept.
216B.02	Definitions.	216B.36	Franchises continued.
216B.03	Reasonable rate.	216B.37	Assigned service areas; electric utilities; legislative policy.
216B.04	Standard of service.	216B.38	Definitions.
216B.05	Publish schedules; regulations; files; joint rates.	216B.39	Assigned service areas.
216B.06	Receiving different compensation.	216B.40	Exclusive service rights.
216B.07	Rate preference prohibited.	216B.41	Effect of incorporation, annexation, or consolidation.
216B.08	Duties of commission.	216B.42	Service extensions in certain situations.
216B.09	Standards; classifications; regulations; practices.	216B.421	Homestead; option of electric service.
216B.10	Accounting system.	216B.43	Hearings; complaints.
216B.11	Depreciation rates and practices.	216B.44	Service extensions in annexed areas; municipal purchase.
216B.12	Right of entrance; inspection.	216B.45	Municipal purchase of public utility.
216B.13	Production of records.	216B.46	Municipal procedure; notice; election.
216B.14	Investigation.	216B.47	Acquisition by eminent domain.
216B.15	Hearings; examiner.	216B.48	Relations with affiliated interests.
216B.16	Rate changes; procedure; hearing.	216B.49	Securities.
216B.17	Complaints.	216B.50	Acquiring property; merger.
216B.18	Service of notice.	216B.51	Stock purchase.
216B.19	Joint hearings and investigations.	216B.52	Appeals.
216B.20	Separate rate hearings.	216B.53	Suspension of commission orders.
216B.21	Summary investigations.	216B.54	Actions by commission; attorney general to institute.
216B.22	Municipalities; amicus curiae authority.	216B.55	Priority of action.
216B.23	Lawful rates; reasonable service.	216B.56	Burden of proof.
216B.24	Construction of facilities; commission approval.	216B.57	Penalties.
216B.25	Change; amendment; rescission of orders.	216B.58	Acts; omission; failure; construction thereof.
216B.26	Orders; effective date.	216B.59	Continuing violations.
216B.27	Rehearings before commission; condition precedent to judicial review.	216B.60	Penalties cumulative.
216B.28	Subpoena; witnesses; fees; and mileage.	216B.61	Actions to recover penalties.
216B.29	Oaths; contempt; examiner's powers.	216B.62	Cost of examination; assessment of expenses; limitations; objections.
216B.30	Depositions.	216B.63	Interest on assessments.
216B.31	Testimony and production of records; perjury.	216B.64	Attorney general to represent commission.
216B.32	Copies of documents as evidence.	216B.65	Department to employ necessary staff.
216B.33	Orders and findings in writing.	216B.66	Construction.
216B.34	Public records.	216B.67	Citation.

NOTE: For penalties for the violation of the provisions of this chapter, see section 235.13.

**216B.01 LEGISLATIVE FINDING.** It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers. Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of chapter 308, it is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein.

[ 1974 c 429 s 1; 1978 c 795 s 1 ]

**216B.02 DEFINITIONS.** Subdivision 1. For the purposes of Laws 1974, Chapter 429 the terms defined in this section have the meanings given them.

Subd. 2. "Corporation" means a private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, or any political subdivision or agency.

Subd. 3. "Person" means a natural person, a partnership, or two or more persons having a joint or common interest, and a corporation as hereinbefore defined.

Subd. 4. "Public utility" means persons, corporations or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to or for the public or engaged in the production and re-

## 216B.03 PUBLIC UTILITIES

3232

tail sale thereof but does not include a municipality or a cooperative electric association, organized under the provisions of chapter 308 producing or furnishing natural, manufactured or mixed gas or electric service. Except as otherwise provided, the provisions of Laws 1974, Chapter 429 shall not be applicable to any sale of natural gas or electricity by a public utility to another public utility for resale. No person shall be deemed to be a public utility if it presently furnishes its services only to tenants in buildings owned, leased or operated by such person. No person shall be deemed to be a public utility if it presently furnishes service to occupants of a mobile home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it presently produces or furnishes service to less than 25 persons.

A cooperative electric association may elect to become subject to rate regulation by the commission pursuant to sections 216B.03 to 216B.23. The election shall be (a) approved by July 1, 1978 by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308.15, subdivision 1, excluding the filing requirements; or (b) approved by a majority of members of stockholders voting by mail ballot initiated by petition of no less than five percent of the members or stockholders of the association. The ballot to be used for the election shall be approved by the board of directors and the department of public service. The department shall mail the ballots to the cooperative's members who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the cooperative shall count the ballots. If a majority of the cooperative's members who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after certified copies of the resolutions approving the election are filed with the commission. Any cooperative electric association subject to regulation of rates by the commission shall be exempt from the provisions of sections 216B.48, 216B.49, 216B.50, and 216B.51.

Subd. 5. "Rate" means every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.

Subd. 6. "Service" means natural, manufactured or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity.

Subd. 7. "Commission" means the public service commission of the department of public service.

Subd. 8. "Department" means the department of public service of the state of Minnesota.

Subd. 9. "Municipality" means any city however organized.  
[ 1974 c 429 s 2; 1978 c 795 s 2 ]

**216B.37 ASSIGNED SERVICE AREAS; ELECTRIC UTILITIES; LEGISLATIVE POLICY.** It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

[ 1974 c 429 s 37 ]

**216B.38 DEFINITIONS.** Subdivision 1. MS 1974 [ Renumbered subd 1a ]

Subdivision 1. For the purpose of sections 216B.37 to 216B.44 only, the following definitions shall apply.

Subd. 1a. "Person" means a natural person, a partnership, private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, any political subdivision or agency, or two or more persons having joint or common interest.

Subd. 2. "Customer" means a person contracting for or purchasing electric service at retail from an electric utility.

Subd. 3. "Electric service" means electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.

Subd. 4. "Electric line" means lines for conducting electric energy at a design voltage of 25,000 volts phase to phase or less used for distributing electric energy directly to customers at retail.

Subd. 5. "Electric utility" means persons, their lessees, trustees, and receivers, separately or jointly, now or hereafter operating, maintaining or controlling in Minnesota equipment or facilities for providing electric service at retail and which fall within the definition of "public utility" in section 216B.02, subdivision 4, and includes facilities owned by a municipality or by a cooperative electric association.

Subd. 6. "Assigned service area" means the geographical area in which the boundaries are established as provided in section 216B.39.

Subd. 7. "Municipality" means any city, however organized.

[ 1974 c 429 s 38; 1978 c 795 s 6 ]

**216B.39 ASSIGNED SERVICE AREAS.** Subdivision 1. On or before six months from April 12, 1974, or, when requested in writing by an electric utility and for good cause shown, and at a further time as the commission may fix by order, each electric utility shall file with the commission a map or maps showing all its electric lines outside of incorporated municipalities as they existed on April 12, 1974. Each electric utility shall also submit in writing a list of all municipalities in which it provides electric service on the effective date of Laws 1974, Chapter 429. Where two or more electric utilities serve a single municipality, the commission may require each utility to file with the commission a map showing its electric lines within the municipality.

Subd. 2. On or before 12 months from April 12, 1974, the commission shall after notice and hearing establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to accurately and clearly show the boundaries of the assigned service area of each electric utility.

Subd. 3. To the extent that it is not inconsistent with the legislative policy stated in section 216B.37, the boundaries of each assigned service area, outside of incorporated municipalities, shall be a line equidistant between the electric lines of adjacent electric utilities as they exist on April 12, 1974; provided that these boundaries may be modified by the commission to take account of natural and other physical barriers including, but not limited to, highways, waterways, railways, major bluffs, and ravines and shall be modified to take account of the contracts provided for in subdivision 4; and provided further that at any time after April 12, 1974, the commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after notice and hearing as provided for in sections 216B.17 and 216B.18.

Subd. 4. Contracts between electric utilities, which are executed on or before 12 months from April 12, 1974, designating service areas and customers to be served by the electric utilities when approved by the commission shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.

Subd. 5. Where a single electric utility provides electric service within a municipality on April 12, 1974, that entire municipality shall constitute a part of the assigned service area of the electric utility in question. Where two or more electric utilities provide electric service in a municipality on April 12, 1974, the boundaries of the assigned service areas shall conform to those contained in municipal franchises with the electric utilities on April 12, 1974. In the absence of a franchise, the boundaries of the assigned service areas within an incorporated municipality shall be a line equidistant between the electric lines of the electric utilities as they exist on April 12, 1974; provided that these boundaries may be modified by the commission to take account of natural and other physical barriers including, but not limited to, major streets or highways, waterways, railways, major bluffs and ravines and shall be modified to take account of the contracts provided for in subdivision 4.

Subd. 6. In those areas where, on April 12, 1974, the existing electric lines of two or more electric utilities are so intertwined that subdivisions 2 to 5 cannot reasonably be applied, the commission shall determine the boundaries of the assigned service areas for the electric utilities involved as will promote the legislative policy in section 216B.37, subdivision 1.

[ 1974 c 429 s 39 ]

**216B.62 COST OF EXAMINATION; ASSESSMENT OF EXPENSES; LIMITATIONS; OBJECTIONS.**

Subd. 5. The commission shall be authorized to charge cooperative electric associations their proportionate share of the expenses incurred in the adjudication of service area disputes and all of the costs incurred in the adjudication of complaints over service standards and practices. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.02, subdivision 4, shall be subject to this section.

[ 1974 c 429 s 62 subds 1-4; 1978 c 674 s 60; 1978 c 795 s 9 ]

296-6025

October 30, 1979

Ms. A. F. Trinka  
 1359 Cosmos Lane  
 Eagan, MN 55123

Dear Ms. Trinka:

We appreciate your desire to present the positive side of the Public Service Commission and hope the following responses to the eight questions posed in your October 25 letter will be helpful to you.

QUESTION #1: Who authored the legislation to remove Dakota Electric Association and other electrical cooperatives from the supervision of the Public Service Commission?

RESPONSE: Following are the authors of Senate File 715, exempting electric cooperatives from rate regulation:

James W. Nichols	District 20
Roger Laufenburger	District 34
Roger D. Moe	District 2
John Bernhagen	District 22
Carl A. Jensen	District 28

Following are the authors of House File 830, exempting electric cooperatives from rate regulation:

Gene Wenstrom	District 11A
Glen Anderson	District 15B
William Kelly	District 2A
David Fjoslien	District 11B
Henry Kalis	District 30A

QUESTION #2: Was Dakota Electric Association ever audited by the Public Service Commission, during its three years under their supervision, if not, why?

RESPONSE: No. The Dakota Electric Association did not file a request to the Public Service Commission for increased rates during the period when electric cooperatives were under state regulation. There was no request or petition by the cooperative or its members for an audit, and the company properly filed reports as required. The Department staff monitored, on a continuing basis, the purchased power adjustments and verified the supporting data as submitted by the cooperative in compliance with Commission rules. There was, thus, no apparent good reason to reassign staff from other responsibilities to perform either a financial or management audit of the

Ms. A. F. Trinka

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Oct. 30, 1979

Dakota Electric Association.

QUESTION #3: What types of expense are disallowed by a Public Service Commission, audit, from being passed on to cooperative member consumers?

RESPONSE: The Public Service Commission makes a determination of allowable rate base and expense items on a case-by-case basis in accordance with the evidence presented during rate case proceedings. In investigating operating revenues and expenses, the investigating team and the Commission usually make a special scrutiny of matters like advertising expenses, charitable contributions, salaries, expenses of officers and directors, allowance for construction work in progress and any operating expenses that would be a departure from normal expense items. In an electric cooperative, the rate payers and the owners are the same. Thus, an expense item that may be disallowed for rate-making purposes, remains as an expense to the cooperative and is reflected in a reduction in the margins the cooperative shows at the close of its fiscal year. It is not possible to pre-determine what expense or investment items would be disallowed by the Commission in any rate proceeding because the determination would be made on the basis of evidence presented on the record.

QUESTION #4: Do you regulate the retail rate charged the member consumer?

RESPONSE: The Public Service Commission determines retail electric rates for each customer class based on the total revenue requirements of the cooperative and the costs of providing the service.

QUESTION #5: What was the average yearly cost to supervise Dakota Electric Association when they were under your regulatory body?

RESPONSE: In 1975, Dakota Electric Association was assessed \$2,906.48 for regulatory expense. The charge was \$2,639.74 in 1976. Regulatory charges were \$6,300 in 1977 and \$6,096.85 in 1978. Regulatory charges will run considerably higher when rate case expenses are incurred. However, the law provides that in no case can rate case charges exceed 2/5 of 1 per cent of the gross annual revenues of the cooperative, nor can annual regulatory assessments exceed 1/8 of 1 per cent of annual revenues.

QUESTION #6: Are you presently aware that Dakota Electric Association is planning an increase in January 1980, of their KWH to nine and one-half cents per KWH?

RESPONSE: We are aware that United Power Association and Cooperative Power Association are contemplating adjustments in their wholesale rates. We have had no official notification of the amount of any increase planned by Dakota Electric Association.

QUESTION #7: In view of this pending rate increase will you please expedite the examination of the names on our petition, so that we may have

Ms. A. F. Trinka

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Oct. 30, 1979

some input regarding this rate increase?

RESPONSE: The petition from members of Dakota Electric Association asking that the cooperative be included under state regulation under M.S. 216B.02 has been given preliminary examination and appears to contain sufficient signatures to meet statutory requirements. The signatures on the petition are, however, subject to challenge by the cooperative and the attorneys are working on a definition of what constitutes a valid signature. We will continue to expedite proceedings in this matter as much as possible consistent with due process. You will be contacted promptly relative to any problems with the petition signatures.

QUESTION #8: If Dakota Electric is placed under regulation, other than a rate increase request, can the members request an audit?

RESPONSE: Minnesota Statutes 216B.21 gives the Commission authority to conduct an investigation on its own motion if it is believed that rates or charges are unreasonable. The Commission could respond to a request for an audit if they determined need for an investigation.

If we can be of further assistance, please let us know. We, too, are anxious to resolve this matter as quickly as possible.

Sincerely,

Eugene V. Avery,  
Director

EVA:RWC:eiw

cc: Steve Finn, Department of Public Service  
R. W. Carlson, Department of Public Service

## Proposed Petition Verification Procedures

1. Department of Public Service to perform initial verification to insure that there are sufficient signatures to proceed with detailed validation procedures. Petitions will not be accepted by the Department of Public Service after December 1, 1979.
2. Department of Public Service to deliver copy of petitions to the Dakota Electric Association  
Additional new petitions will be forwarded to Dakota Electric after they are received and validated by the Department of Public Service.
3. Dakota Electric Association will have 10 days to verify that the signatures on the petition are valid according to the following criteria:
  - a. for residential members DEA to identify last name of signature and check the membership list for same name. (count as valid one signature/printed name per household)
    - \* if it is not possible to visually identify the last name, check the address on the membership list and compare the name at that address with the name on the petition
  - b. for unincorporated businesses listed, verify the name on the petition with list of commercial members
  - c. for corporate business members, the signature must be that of a person authorized to sign for the corporation
  - d. invalid signatures must be supported by some statement explaining why the signature is deemed to be invalid (in order to aide the review process please provide page references)
4. Upon completion of the verification process, the Department of Public Service and the Board of Directors of the Dakota Electric Association will meet to:
  1. Discuss the rationale used for invalidating signatures
  2. Recompute the total number of valid signatures
  3. Determine if the 5% criteria for a balloting has been met
    - a. If so, a draft ballot form will be developed by the Department of Public Service for the Board's review and approval. Upon acceptance of the ballot form, a balloting procedure will be finalized as well.
    - b. If not, the membership of the Dakota Electric Association should be informed of that result by the Department of Public Service.



STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SERVICE  
7TH FLOOR AMERICAN CENTER BLDG.  
KELLOGG & ROBERT STS.  
SAINT PAUL 55101

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296-8994

November 5, 1979

Mr. C. O. Soderlund  
General Manager  
Dakota Electric Association  
4300 - 220th Street West  
Farmington, MN 55024

Dear Mr. Soderlund:

I am writing this letter to confirm the results of the meeting between Dakota Electric Cooperative management and Department of Public Service representatives held at approximately 1:00 p.m. on Friday, October 19, 1979, at your offices in Farmington.

The purpose of the meeting was to discuss procedures for determining whether sufficient signatures on petitions have been obtained to initiate balloting under Minn. Stat. § 216B.02, subd. 4 (1978). The parties agreed upon the following procedures.

1. As required by Minn. Stat. § 216B.02, subd. 4, a valid signature on petitions and on ballots shall be that of a registered member of Dakota Electric Cooperative only.
2. The Department of Public Service will assume that otherwise valid signatures are signatures of members. When the petitioning members certify that sufficient signatures are provided, Dakota Electric Cooperative shall be permitted to review the signatures to determine that the petitions contain signatures from 5 percent or more of the registered members.
3. Dakota Electric shall verify the signatures through the current computerized membership list available at its Farmington office. It shall check the last name, initial, and address on the petition against the membership list.
4. If Dakota Electric objects to a signature, it must support its objection by a statement explaining why the signature is deemed to be invalid. Criteria for invalidating signatures included photocopies (on original), illegible signatures, non-members signatures, and duplicate signatures.
5. The total number of members shall be determined by using the number of members submitted to the R.E.A. for the end of the month preceding the certification of petitions by the petitioning members to the Department of Public Service.

6. The petitioning members will be notified of these procedures. Dakota Electric will cooperate with the petitioning members to identify registered members who may sign the petition and vote.

I believe that this list accurately summarizes the agreement on procedures preceding balloting. If you agree with these procedures, please sign the enclosed copy of this letter and return it to me.

At the meeting, the contents of the ballot were discussed. Because the ballot will not be finalized until after the petitions are accepted, I will not address the agreement on the ballot at this time.

If you have any questions, please call.

Very truly yours,



Stephen A. Finn  
Management Planning Coordinator

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C. O. Soderlund

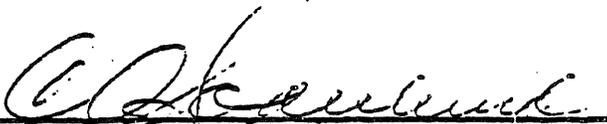
SAF:mem

cc: Gene Avery  
Harold Levander, Jr.  
Karl W. Sonneman

7. For the petitions to be sufficient for the purpose of voting on the question, the petitions must contain five percent (5%) of the members at the time that it is submitted to Dakota Electric Association for verification. If the petitions do not contain five percent (5%) of the members at that time, it fails and the petition process must be started over again.



Stephen A. Finn  
Management Planning Coordinator



C. O. Soderlund  
General Manager

TO : Gene Avery  
Steve Finn

DATE: November 5, 1979

FROM : Karl W. Sonneman  
Special Assistant  
Attorney General

PHONE: 296-0420

SUBJECT: Dakota Electric/Conference Call to Petitioners

On Friday, November 2, 1979, at 2:30 p.m., I arranged a conference call with Mrs. Trinka, Kreitz, and Debuhr. Mr. Avery asked that I talk to these persons, who are the principal organizers among the petitioners in the Dakota Electric Cooperative matter.

I explained the proposed guidelines for evaluating the petitions submitted, requesting regulation of Dakota Electric. If petitions of 5 percent of the members are submitted, the membership of Dakota Electric will be balloted.

I explained:

that signatures on the petitions and the ballots must be submitted by registered members of Dakota Electric. The petitioners understood that this requirement was compelled by the statute and after some discussion did not challenge the use of this guideline. Mrs. Trinka has a copy of the Dakota Electric membership list and apparently is preparing to review the petitions to assure that a sufficient number of members from the list have signed.

I next explained that the Department of Public Service will assume that otherwise valid signatures are signatures of members. The petitioners have been notified of the members' signature requirement and afforded the opportunity to verify that the petitions contain signatures of 5 percent or more of members.

The petitioners were informed that when the Department is told that sufficient petitions with members' signatures have been submitted, it must afford Dakota Electric Cooperative the opportunity to review the petitions in order that Dakota Electric can determine that the petitions contain signatures for 5 percent or more of the members.

I explained to the petitioners that signatures will be rejected if the signature is a photocopied signature, if the signature cannot be identified with a petition which states its purpose, if the signature is illegible or duplicative, and if the signature is by a non-member. The petitioners indicated that they understood these requirements. The petitioners were concerned about a scroll petition where many pages contain only signatures and no description of purpose. Petitioners stated that these signatures had been physically attached but that the individual had separated some sheets (or all sheets) when it had been submitted to the Department. I indicated to petitioners that petitions that were physically attached and where the signature clearly followed a statement of purpose

November 5, 1979

- 2 -

Gene Avery  
Steve Finn

would be accepted. I do not recall how the scroll petition has been treated. This matter may be further reviewed with petitioners.

Petitioners expressed considerable concern over the advocacy efforts of the cooperative to oppose a vote for regulation. Petitioners strongly want accurate information concerning the cost of regulation and the benefits of regulation and do not feel that they are receiving this from the cooperative.

KWS:mcm



STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SERVICE

7TH FLOOR-AMERICAN CENTER BLDG.  
KELLOGG & ROBERT STS.  
SAINT PAUL 55101  
November 15, 1979

Margaret Trinka  
1359 Cosmos Lane  
Eagan, Minnesota 55123

Dear Mrs Trinka:

Enclosed is a copy of a letter of agreement between the Dakota Electric Association and the Department of Public Service. It identifies the procedure to be followed in validating signatures on the petitions submitted by members of the Dakota Electric Association for re-regulation of electric rates by the Minnesota Public Service Commission.

As you will note, "valid signatures" are defined in #1 as being signatures of registered members of the Dakota Electric Association only. Other criteria for invalidating signatures include: photocopies (rather than original pages), illegible signatures, and duplicate signatures. Also, it should be pointed out that the signatures must clearly follow a statement of purpose in order to be considered valid.

Since there is agreement on the procedure, the Department of Public Service is now waiting for some written statement from you, the leaders in the petition drive, stating that you feel that there have been sufficient signatures submitted for the Dakota Electric Association to commence their verification process. Petitions submitted to date and a list of persons submitting them are enclosed.

It is important to understand that if it is determined that there are an insufficient number of signatures on the petition (less than 5% of the Dakota Electric Association membership), those petitions will be deemed to have failed. Any further action by petitioners will require the gathering of new signatures. In other words, you must start at zero and accumulate another set of new signatures, totaling to 5% or more of the current membership.

When you feel that sufficient signatures have been submitted, please let us know in writing. We will forward the petitions to the Dakota Electric Association for verification at that time.

If I can be of any assistance, please do not hesitate to give me a call at 296-8214.

Sincerely,

Stephen A. Finn  
Management Planning Coordinator

SAF:jh

Enclosure

c: Gene Avery  
Kari Sonneman  
Oscar Soderlund  
Harold LeVander

AN EQUAL OPPORTUNITY EMPLOYER



STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SERVICE

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7TH FLOOR AMERICAN CENTER BLDG.  
KELLOGG & ROBERT STS.  
SAINT PAUL 55101  
November 15, 1979

Alice Krentz  
2095 King Road  
Eagan, Minnesota 55122

Dear Mrs Krentz:

Enclosed is a copy of a letter of agreement between the Dakota Electric Association and the Department of Public Service. It identifies the procedure to be followed in validating signatures on the petitions submitted by members of the Dakota Electric Association for re-regulation of electric rates by the Minnesota Public Service Commission.

As you will note, "valid signatures" are defined in #1 as being signatures of registered members of the Dakota Electric Association only. Other criteria for invalidating signatures include: photocopies (rather than original pages), illegible signatures, and duplicate signatures. Also, it should be pointed out that the signatures must clearly follow a statement of purpose in order to be considered valid.

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When you feel that sufficient signatures have been submitted, please let us know in writing. We will forward the petitions to the Dakota Electric Association for verification at that time.

If I can be of any assistance, please do not hesitate to give me a call at 296-8214.

Sincerely,

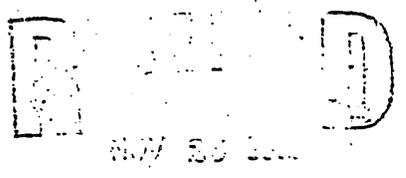
Stephen A. Finn  
Management Planning Coordinator

SAF:jh  
Enclosure  
c: Gene Avery  
Karl Sonneman  
Oscar Soderlund  
Harold LeVander

AN EQUAL OPPORTUNITY EMPLOYER

6  
11.3

2095 Kings Drive  
Eagan, MN. 55122  
November 21, 1979



THE DAKOTA ELECTRIC ASSOC.

Department of Public Service  
7th Floor American Center Bldg.  
Kellogg and Robert Streets  
St. Paul, MN 55101

Attention: Stephen A. Finn, Management Planning Coordinator

Dear Mr. Finn:

Thank you for submitting copies of the petitions which we had presented to the Public Service Commission on October 22, almost one month ago.

We have followed the procedures specified for the validation of signatures on the petitions submitted by members of Dakota Electric Association for re-regulation of electric rates by the Minnesota Public Service Commission.

Unfortunately, hundreds of signatures had to be eliminated from the members' petitions because they belonged to wives who did not have their names on the membership rolls of Dakota Electric Association. Many names were illegible too.

After days of scruntinizing signatures, we have determined our total number of valid signatures to be one thousand, nine hundred and forty eight (1,948).

We were told we needed only 1,232 signatures in order to have the opportunity for members to receive a ballot regarding re-regulation. We feel the majority of Dakota Electrics' members are anxiously awaiting their ballot.

We sincerely hope the Board and the Administration of DEA will expedidite their verification. Members are becoming fed-up with seeing 'our' money spent to convince members that we "do not need to be re-regulated".

Dakota Electrics' reluctance to comply with the greater number of members' desire in this matter only 'fans the fire of determination' to accomplish the goal of DEA becoming re-regulated.

Margaret and I hope you all enjoy a happy Thanksgiving Day! We truly have much to be thankful for----and living in a country where the majority rules is one of our many blessings.

Sincerely,

Mrs. Alice Kreitz

Mrs. Margaret Trinkka

- c: Eugene Avery
- Gary L. Hunt
- Karl Sonneman
- Oscar Soderlund
- Mpls. Star
- St. Paul Dispatch
- Dakota Co. Tribune
- Mn. Valley SUN
- Current/Countryside



STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SERVICE

7TH FLOOR AMERICAN CENTER BLDG.  
KELLOGG & ROBERT STS.  
SAINT PAUL 55101  
February 14, 1980

TO: Dakota Electric Association Board of Directors  
Dakota Electric Association Member Petitioners

FROM: Eugene V. Avery, Director *EVA*

RE: Dakota Electric Association Regulation  
Petition Drive Status

The Department of Public Service has met separately with representatives of the Dakota Electric Association (DEA) Board of Directors and a group of members leading the reregulation petition drive.

The Department has been attempting to resolve differences between the parties before making a decision on the petition. We plan to delay a decision on the petition and use the intervening time to give the parties an opportunity to review and consider the views expressed by both the DEA Board of Directors and the petitioners in this matter.

One of the purposes of our meetings with both sides has been to explore avenues for negotiation, cooperation and a resolution of the differences. During the course of these meetings we have discovered the following:

1. Both the Board and Petitioners seem genuinely interested in resolving the matter without protracted legal challenges and delays.
2. Both sides recognize that much of the difficulty is a communications and public relations problem which needs to be solved apart from the question of regulation.
3. Both sides feel there are real pros and cons to regulation which should be considered prior to any decision.
4. The Board of Directors feels the matter of definition of members as only those "registered" is critical to the case.
5. The petitioners see the Board position regarding recognition of signatures of registered members or spouses as a delaying tactic.

6. The Board feels that the impetus is gone from the petition drive and that the remaining problems are ones of communication which should be dealt with at the following meetings:

General Members Meeting  
February 19, 1980, 7:30 p.m.  
Apple Valley Middle School

Annual DEA Meeting &  
Election of Directors,  
March 15, 1980  
Farmington High School

7. The petitioners recognize the procedural and other questions raised by the petition could mean legal action and delay.
8. The petitioners are considering circulating a second petition which would attempt to overcome the legal questions involved in defining members in order to provoke a ballot on the question of reregulation as soon as possible.
9. All the parties recognize the need for legislative action to more precisely outline the legislative intent in this matter and the procedures to be followed.

#### DEPARTMENT OF PUBLIC SERVICE POSITION

The Department of Public Service sees its role as a mediator in this matter. We have attempted to get the parties to focus on the issues to be resolved, agree to groundrules where possible and mediate disputes.

We are convinced that much of the problem in this case is a failure of the cooperative and its members to communicate. We are reluctant to act hastily and risk seeing positions harden unnecessarily. We also do not want to see a regulatory solution to a communications problem.

The Department is neutral on the matter of regulation of cooperatives. There are clearly pros and cons to the question. Only the legislature can decide what the policy of the state should be in this matter. If the question is raised in the legislature we will give our best advice about the costs, benefits, advantages, disadvantages and consequences of such regulation.

We believe the best outcome in this Dakota Electric case will come from urging direct communication between the utility and members to debate the points at issue, from urging the members to fully exercise their rights as members to get involved in the decisions of the

cooperative and in avoiding, if possible, a long and costly legal battle over the petition and election process for reregulation.

Accordingly, we plan the following course of action:

1. We plan to defer a decision on the current petition until after the Annual Meeting of the DEA to give both the utility and members an opportunity to review the problems and negotiate solutions.
2. We urge all members of the DEA to attend and participate in the members meeting about regulation to be held Feb. 19, at 7:30 p.m., Apple Valley Middle School, as well as the Annual Meeting and Election of Officers to be held March 15, 1980 at the Farmington High School.
3. We urge the petitioners to give careful consideration to the effect of a court challenge surrounding the current petition and attempt to do one of the following:
  - a. Negotiate a different set of groundrules with the utility to avoid a challenge to the current petition, or
  - b. Circulate a new petition which avoids the groundrules in dispute.
4. The Department plans to make specific suggestions to the legislature through the Senate Commerce Committee subcommittee on Publicly Regulated Industries to improve the procedures used in implementing this law.

We urge the parties to do likewise.

5. Following the DEA annual meeting, the Department will decide the most appropriate way of acting on the petition at hand once the utility/member meetings have been held.

EVA:GLH:elw

cc: DEA Members (petitioners) attending meeting 2/11/80  
Mrs. Connie DeBuhr, Larry Bohrer, M. E. Trinkka,  
Mrs. Betty Sindt, Clarence L. Sindt Jr.  
DEA Board Members & Staff attending meeting 2/8/80  
Harold LeVander Jr., Skipp Clapp, Arleigh H. Thorberg,  
Art Volkert, Dick Okerberg, Bob Rankin, Richard LeMay

DEA Board of Directors  
DEA Member Petitioners

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Feb. 14, 1980

Copy Distribution continued:

Sen. Howard Knutson, Rep. Ray Kempe, Rep. Charles Halberg,  
Sen. Gerry Sikorski, Rep. Michael Sieben, Jr., Sen. Steve  
Engler, Rep. Steve Sviggum, Sen. Conrad Vega, Rep. Gary  
Laidig, Rep. James Metzen.

Members of Senate Commerce Committee, Subcommittee on  
Publicly Regulated Industries.

Minneapolis Star & Tribune  
St. Paul Dispatch & Pioneer Press  
Burnsville Current/Countryside  
Dakota County Tribune  
Burnsville Sun  
Northfield News  
Red Wing Republican Eagle

DEPARTMENT Public Service*Office Memorandum*

TO : Representatives Voss, Jacobs, H. Sieben,  
authors H.F. 565

DATE: March 4, 1980

FROM : Gary L. Hunt,  
Deputy Director

PHONE: 6-0418

SUBJECT: Status of Dakota Electric Cooperative Petition  
Drive and Defects in the Current Law.

As you may know, the Public Service Department has been mediating the dispute between petitioners and the Board of Directors of the Dakota Electric Association.

The 1978 law deregulating electric cooperatives provides a petition process for re-regulation which is very difficult to enforce. Since you have introduced a bill on this subject, we thought you'd be interested in the status of this matter as part of your consideration.

Attached are the following:

1. Status Report on Dakota Electric Association petition drive.
2. List of electric cooperatives.
3. History of electric cooperative rate cases before the PSC prior to deregulation.

I wish to make clear that the Department has taken no position on the question of the regulation of cooperatives. This is strictly a legislative policy decision.

We see our role in the current situation as a mediator between the Board of Directors and the petitioners.

We expect to make a decision about the Dakota Electric Cooperative petition later this month once the Board and members have had an opportunity to thoroughly debate the matter at their annual meeting and election of officers.

As we said, the 1978 law deregulating cooperatives has problems in its re-regulation-by-petition provisions, including the following:

1. What was the legislative intent in the petition process? May only registered members sign a petition? Are spouses of members to be excluded from both the petition process or balloting? If there are joint memberships of husband and wife who may vote or sign the petition? Did the Legislature intend to allow one signature or vote per household?

Representatives

Voss, Jacobs, H. Sieben

- 2 -

March 4, 1980

2. The law requires joint Department-Board of Directors Agreement on the ballot to be used. What if the Board fails to agree to a ballot format?
3. The Department is required to conduct the ballot by mail. Is the utility obligated to provide a mailing list (the Department keeps no such records, of course) or computer time to produce it.

Is the state to pay for such a ballot election? Should the costs be assessed to the utility? No authority for such a billing is provided.

4. The election resulting in re-regulation is not effective for 30 days after the Board files resolutions approving the election results with the PSC. What if the Board fails to act? What authority does the Board have to act in this 30-day period?

In the current Dakota Electric Cooperative matter we are trying to be deliberate in our actions. We also have tried to bring the Board and petitioners together in an effort to give the members an opportunity to fully exercise their rights as members to be involved in and help shape the decisions of the Board.

The current law is unclear enough that legal action may be the only recourse available. We would prefer to see a faster solution arrived at by the parties or legislative action.

We don't believe the public interest is best served by spending months in court and thousands of dollars of taxpayer and ratepayer money if that is avoidable.

In the last analysis only the Legislature can say what its intent is and what the legislative policy on the regulation of cooperatives and the functioning of the petition process will be in the future.

All the parties need that clear direction now.

Steve Finn from our Department staff will be available to provide any assistance possible to help resolve these petition process problems.

GLH:elw  
enc.

cc: *Chairman Hanson*  
*Steve Finn*  
*file*



**STATE OF MINNESOTA**  
**DEPARTMENT OF PUBLIC SERVICE**  
 7TH FLOOR AMERICAN CENTER BLDG.  
 KELLOGG & ROBERT STS.  
**SAINT PAUL 55101**

PHONE: \_\_\_\_\_

March 17, 1980

Representative Phyllis Kahn  
 237 State Office Building  
 St. Paul, Minnesota 55155

Dear Representative Kahn:

We received your letter of March 13, 1980, concerning the Dakota Electric Association petition, and are happy to have this opportunity to both set the record straight and correct some misinformation you have in this matter.

We certainly have not "acquiesced" to any blatant sex discrimination. In all fairness, I should also point out that while we dislike this situation as much as you do, our investigation to date shows that the problem rests more with what the law says - or fails to say - than with the Dakota Electric board or petitioners.

We expect to make a decision on the status of the petition for re-regulation following the receipt of any further communications from either the petitioners or the Board after the annual meeting of cooperative members.

That this process has taken so long and is so confused is a clear indication of the defects in the law rather than any acquiescence on our part.

Let me share a few facts with you to help put this into perspective:

- (1) Since the petition drive began we met with both the petitioners and the Board to explore avenues of potential compromise and agreement between the two. (See enclosed letter)

In fact, our decision to delay a determination on the petition was made as a result of a meeting with the petitioners in order to give them the opportunity they sought to exercise their rights as members both at a general meeting about the petition drive February 19, 1980, and the annual members meeting March 15, 1980.

- (2) Through the Attorney General's office we explored whether there was any basis for a civil complaint of discrimination against the utility concerning who may be a member. We found none.

AN EQUAL OPPORTUNITY EMPLOYER

(6)  
03

Representative Phyllis Kahn  
March 17, 1980  
Page Two

We discovered that the individual may elect to have a joint membership or to have membership in the name of either spouse or any member of the household.

The individual may also change the member designation at any time by notifying the utility.

We found that the cooperative provides full information about membership to all persons moving into the service area. Membership is listed in the name appearing on the bill unless another direction is given by the customer.

Joint memberships have tended not to be as popular with customers because the payment of "capital credits" which occurs at the death of a member are not paid until the death of the surviving spouse in the event of joint memberships.

3. The Department has also been actively involved during the 1980 legislative session trying to explain some of the serious problems in enforcement of this statute.

In the Senate, we appeared before Senator Sikorski's subcommittee on publicly regulated utilities on Senator Merriam's bill (SF 422) to discuss this DEA petition and the problems we've found with the law.

In the House, we worked with Reps. Voss, Jacobs and H. Sieben on HF 565 to identify the problems so that corrective action could be taken (see attached memo).

The legislature, however, chose not to act in this regard.

The statute (MS 216B.02, subd. 4) speaks clearly about "registered members" when talking about the petition process.

We're sure you appreciate that the duty of any Department administering a statute is to enforce what the law says. We have no license to read more or less intent into the statute.

In reviewing the petition before us we expect to best serve the public interest by trying to get the parties to agree wherever possible to methods, procedures and actions which allow the problems to be solved without long delays and great legal costs where avoidable.

Representative Phyllis Kahn  
March 17, 1980  
Page Three

We are prepared to go to court in the public interest if we believe it would better solve the problem and if we believe we'd have a reasonable chance of prevailing and such action could conscientiously be based in legislative intent.

The legislature's use of the term "registered members" appears to have been deliberate and clear. That term has significance both in the workings of all cooperatives (that is, it is not unique to DEA) as well as in a corporate sense of being a stockholder.

We have found no evidence of any legislative intent to define membership in any way other than what the law says.

This has, unfortunately, put the Department of Public Service in the position of being taken to task no matter what happens.

We do not believe the criticism of the Department in this regard is fair or justified.

We believe in our responsibility to act in the public interest. We are attempting to fairly administer the law as passed by the legislature. We believe we best serve both the public and the legislature by surfacing the problems we find with the statute and making suggestions on how to correct them. We have done that. It is not our job to say what the legislative policy of the State of Minnesota should be regarding the regulation of cooperatives, and we have not intruded into the legislature's prerogative in this regard.

We would be very happy to work with you and others interested in this matter before or during the 1981 Session to again surface these questions of both procedure and legislative intent.

We hope the information we've provided here is helpful to you. I'll be happy to discuss this with you further at any time.

Sincerely,

  
Eugene V. Avery  
Director

EVA/GLH/jg  
cc: Public Service Commissioners

## ELECTRIC COOPERATIVES SERVING MINNESOTA

<u>Name of Utility</u>	<u>Minnesota Customers</u>	<u>Minnesota Operating Revenues</u>	<u>Electric Utility Plant in Service (Original Cost)</u>	<u>Electric Utility Construction Work in Progress</u>
Agralite Cooperative	4,236	\$ 2,441,845	\$ 11,788,752	\$ 41,549
Anoka Electric Cooperative	37,503	16,318,945	28,283,624	220,103
Arrowhead Electric Cooperative, Inc.	1,906	658,865	2,480,432	27,217
Beltrami Electric Cooperative, Inc.	8,998	2,815,094	11,178,720	165,795
Blue Earth-Nicollet Cooperative Electric Assn.	6,066	3,420,691	8,006,913	67,334
Brown County Rural Electric Assn.	3,245	1,782,559	4,739,058	None
Burnside Power Assn.	188	37,444	23,000	None
Carlton County Cooperative Power Assn.	8,042	2,492,939	7,006,688	33,922
Cedar Valley Rural Electric Cooperative	33*	20,033	41,728*	1,401*
Clearwater-Polk Electric Cooperative, Inc.**	3,134	930,335	3,504,998	26,718
The Cooperative Light and Power Assn. of Lake County**	3,460	1,088,324	3,232,945	30,658
Crow Wing Cooperative Power and Light Co.	20,367	5,726,280	15,457,201	182,437
Dairyland Electric Cooperative	10,087	3,740,301	10,431,840	164,928
Dakota Electric Assn.	25,126	13,254,758	22,589,530	3,262,045
D.E.K. Rural Electric Cooperative	29	13,523	33,135	356
East Central Electric Assn.	20,386	9,339,119	15,584,932	73,352
Faribault County Cooperative Electric Assn.	1,324	776,016	2,063,800	16,045
Federated Rural Electric Assn. Cooperative	4,641*	2,050,716	7,434,330	434,567
Freeborn-Mower Electric Cooperative	5,380	3,422,997	8,727,469	261,909
Goodhue County Cooperative Electric Assn.	3,339	2,203,447	4,514,001	48,864
Hamlin (H.D.) Electric Cooperative	17	6,945	26,292*	7*
Head of the Lakes Cooperative	422	157,227*	659,529*	15,748*
Itasca-Mantrap Cooperative Electric Assn.**	5,505	1,262,401	4,256,820	279,402
Kandiyohi Cooperative Electric Power Assn.	5,277	2,264,505	4,778,793	112,056
Lake Region Cooperative Electric Assn.	16,578	5,049,486	14,129,867	160,407
Lyon-Lincoln Electric Cooperative Assn.	3,583	1,377,603	4,243,109	414,558
McLeod Cooperative Power Assn.	4,974	2,838,651	6,320,368	8,672
Meeker Cooperative Light and Power Assn.	5,844	2,744,728	7,542,889	4,842
Mille Lacs Electric Cooperative	8,909	2,787,751	7,931,593	128,602
Minnesota Valley Cooperative Light and Power Assn.	5,491	2,284,785	10,416,094	183,418
The Minnesota Valley Electric Cooperative	9,977	4,793,752	8,845,863	742,483
Nobles Cooperative Electric Co.	4,637	1,956,622	7,354,971	959,801
Northern Electric Cooperative Assn.	13,302	4,455,197	16,656,239	789,702
North Itasca Electric Cooperative, Inc.**	3,309	1,081,726	4,242,329	407,799
North Pine Electric Cooperative, Inc.	5,974	1,969,719	6,000,820	159,488
North Star Electric Cooperative, Inc.	3,999	1,299,914	4,823,820	162,898

## ELECTRIC COOPERATIVES SERVING MINNESOTA (Continued)

<u>Name of Utility</u>	<u>Minnesota Customers</u>	<u>Minnesota Operating Revenues</u>	<u>Electric Utility Plant in Service (Original Cost)</u>	<u>Electric Utility Construction Work in Progress</u>
Peoples Cooperative Power Assn. of Olmsted	9,607	\$4,842,563	\$12,383,460	\$ 711,755
P.K.M. Electric Cooperative Assn.	3,775	1,470,410	6,388,319	735
Red Lake Electric Cooperative, Inc.	4,544	1,747,140	6,437,538	342,548
Red River Valley Cooperative Power Assn.	4,081	1,730,169	5,440,236	391,999
Redwood Electric Cooperative	2,473	1,117,980	3,998,371	6,302
Renville-Sibley Cooperative Power Assn.	2,097	1,146,439	3,394,032	(1,019)
Roseau Electric Cooperative, Inc.	3,597	1,358,661	5,419,057	179,608
Runestone Electric Assn.	8,032	2,804,468	8,799,044	197,948
South Central Electric Assn.	4,101	1,910,828	6,795,208	311,282
Southwestern Minnesota Cooperative Electric	2,737*	1,274,476	4,385,375	457,262
Stearns Electric Assn.	11,674	5,800,994	16,487,457	340,464
Steele Waseca Cooperative Electric	5,901	3,293,336	8,496,307	92,293
Stuntz Cooperative Light and Power Assn.	250	175,000	122,145	None
Todd Wadena Electric Cooperative	5,284	2,392,772	5,787,867	328,643
Traverse Electric Cooperative, Inc.	1,746*	692,807	2,167,091*	58,611*
Tri-County Electric Cooperative	9,827	4,770,711	10,186,347	732,760
Wells Electric Assn.	602	408,714	1,079,463	None
Wild Rice Electric Cooperative, Inc.	9,064	2,650,113	8,351,019	506,922
Winnebago Rural Electric Cooperative	22	9,296	10,640*	22*
Wright Hennepin Cooperative Electric Assn.	15,380	6,728,855	12,341,248	187,594
<b>TOTALS</b>	<b>389,892</b>	<b>\$155,190,975</b>	<b>\$403,822,716</b>	<b>\$14,434,812</b>

Data — 1977 year-end 12-31-77

\*Minnesota jurisdiction as a percent of revenue cal.

\*\*P/C to utility.

**ELECTRIC RATE CASE SUMMARY  
COOPERATIVES  
ORDERS ISSUED FROM 1/1/75**

<u>Utility</u>	<u>Docket Number</u>	<u>Amount Requested</u>		<u>Amount Granted</u>		<u>Allowed Rate of Return</u>		<u>Date of Order</u>
		<u>Dollar Change</u>	<u>Percent Increase</u>	<u>Dollar Change</u>	<u>Percent Increase</u>	<u>Percent on Rate Base</u>	<u>Percent on Equity</u>	
McLeod Coop. Power Assn.	E120/GR-76-184	\$ 204,000	10	\$ 204,000	10	6.44	N/A	11/18/76
Beltrami Electric Coop.	U-76-1013	270,000	14	263,000	14	4.22	N/A	10/28/76
Freeborn-Mower Electric Coop.	U-76-802	326,000	11	326,000	11	6.88	11.00	9/22/76
Dairyland Elec. Coop. Assn.	E110/GR-76-601	427,000	16	427,000	16	6.30	11.3	11/17/76
Mille Lacs Elec. Coop.	E122/GR-76-1736	253,000	15	224,000	13	4.82	10.79	5/20/77
Southwestern MN Elec. Coop.	E140/GR-76-1580	228,500	18	207,000	16	8.65	13.64	5/20/77
Anoka Electric Coop.	U-76-103	996,000	10	984,000	9.9	6.83	10.05	2/24/77
Itasca-Mantrap	E117/GR-76-192	236,000	27	123,000	14	6.39	12.97	2/24/77
The Cooperative Light & Power Assn.	E108/GR-76-739	68,000	10	68,000	10	4.44	6.45	2/02/77
Redwood Electric Cooperative	E135/GR-76-1317	198,000	24	198,000	24	7.06	9.00	2/01/77
Wright-Hennepin	E148/GR-76-698	802,000	18	782,000	17.5	7.28	13.22	1/01/77
Freeborn-Mower Electric Coop.	E116/GR-76-3646	219,790	8.4	187,412	5.5	7.1	10.4	9/28/77
Dairyland Electric Coop.	E110/GR-77-220	394,061	11.37	394,716	11.37	6.65	10.00	10/06/77
McCleod Electric Coop.	E120/GR-77-254	169,230	6	157,014	5.6	7.06	10.33	12/15/77
Crow Wing Coop. Power	E109/GR-77-340	584,920	10.85	521,490	9.67	8.32	13.77	12/23/77